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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,651	12/21/2001	Gilles Rubinstenn	05725.1012-00	2641

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Washington, DC 20005-3315

EXAMINER

PASS, BARRY

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 06/04/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/024,651

Applicant(s)

RUBINSTENN, GILLES

Examiner

Barry Pass

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7-10, 21-24, 27-30, 41-43 and 46-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott US 4,434,467. Scott discloses a system and method for beauty analysis whereby the head of a subject is placed adjacent to a display device; control signals are sent to a display device; the display device includes a means for producing predetermined illumination of the subjects face (inherent to a vision-based system is an illumination source that produces electromagnetic radiation in the visible range, which includes red); an image of the subject's face is displayed; the image is processed to derive information about hair color; stored images are compared; the system uses a computer programmed to provide instructions to effect desired change in hair color.

3. Claims 1-6, 8, 10-26, 28, 30-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Flohr US 5,612,733. Flohr discloses (abstract, columns 1-2, Figs. 9, 10 a, b) a system and method of capturing and displaying an image of a subjects face, head and torso whereby the head of a subject is placed adjacent to a display device; position of the body part is optimized; control signals are sent to a display device (inherent to the scanning process that produces the picture is the production of pulses or flashes of electromagnetic (EM) radiation); EM radiation of predetermined wavelength (including wavelengths corresponding to red) illuminates the

subject's face; a captured image of the subject's face is displayed; the image is processed to derive information; compensation is made for illumination sources to optimally reproduce skin tones in the displayed image (calibration); clients and servers with associated algorithms are utilized and instructions are transmitted over a network (columns 3-4, Fig. 11); processing of the image by comparison to images stored in a database; optimizing image position in the display with a tracking system (column 6).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7, 9, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay US 5,983,201 in view of Flohr and, in regard to claims 7 and 27, further in view of Utsugi US 6,502,583 further in view of Lin US 6,108,437. Fay discloses a system and method for remote electronic shopping for beauty products interactively determined to be best suited for an individual. Fay discloses (abstract, columns 1-4) a database of facial images of an individual downloadable to that individual's personal computer where images are constructed showing how the individual will look with the proposed beauty product. Fay does not teach a system and method of capturing and processing an image of a body part as recited in claim 1. Flohr teaches a system and method of capturing and processing an image of a body part as recited above in the rejection of claim 1. It would have been obvious to someone of ordinary skill in the art at the time of the invention that the system and method of capturing and processing an image of a body

part as taught by Flohr can be used with the system and method of customizing the selection of a beauty product as disclosed by Fay.

In regard to claims 7 and 27 Fay and Flohr do not teach processing captured images of a body part using artificial intelligence. Utsugi teaches (abstract, column 7) a system and method for makeup simulation using image processing but does not teach image processing using artificial intelligence. Lin teaches (abstract, column 6, lines 48-60) the system and method well known in the art of manipulating facial images using artificial intelligence. Accordingly, it would have been obvious to someone of ordinary skill to use image processing with artificial intelligence to analyze facial features and display hypothetical changes brought on by a cosmetic process in a system and method of capturing and processing an image of a body part to customize the selection of a beauty product as taught by Fay and Flohr.

6. Claims 51- 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasuda in view of Skincheck™ (Omniconcontrols, September 2000). Yasuda US 6,034,698 teaches a hairdo selection system and method in which a subject is precisely positioned in an electronic apparatus that captures an image of the subject and synthesizes images of the subject with previous stored hairdo patterns to enable a personalized beauty-enhancing recommendation. Yasuda does not teach a beauty analysis system with a pH indicator. Skin-care kits including pH indicators, such as taught by Skincheck™, are well known in the art and inclusion of such a tool in a beauty kit is a matter of design choice.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Harris US 6,336,136 teaches a beauty analysis system and method (weight reduction system) carried out over the Internet wherein a subject is properly positioned to provide a current image of the subject and a server compares the current image of the user to a stored previous image to determine a weight reduction based on information supplied by the user and the image comparison.

Kambhatla et al. US 6,238,337 teach a system and method of detecting signs of emerging illness such as skin cancer through the utilization of a local camera supplying information via networks to a central server for detailed processing, analysis and possible action.

Osterweil et al. US 6,567,682 teach a system and method for determining a characteristic of a selected skin blemish that utilizes an electronic system for image capture and compares the captured image with an earlier image stored in a database.


Katagiri et al. US 5,966,112 teaches an electronic display that integrates image capture and image display and utilizes illumination sources within the display providing EM radiation of predetermined wavelengths.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry Pass whose telephone number is (703) 305-0726. The examiner can normally be reached on Monday-Friday, 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef can be reached on (703) 308-3256. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0758 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0873.

Barry Pass  
May 27, 2003

  
Marvin M. Lateef  
Supervisory Patent Examiner  
Group 3700